

Traffic Law Update 2010



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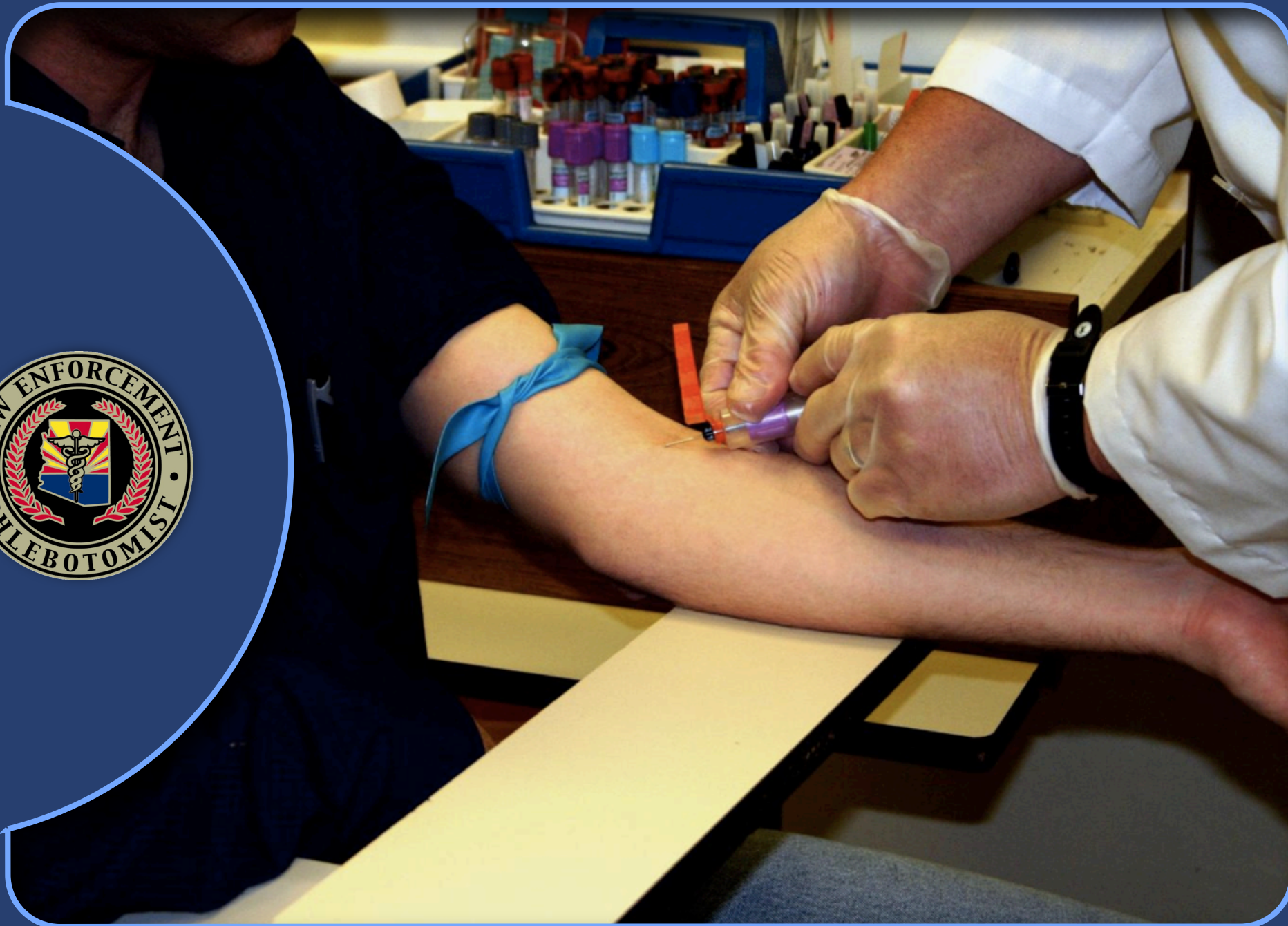
Idaho

- **Twin Falls County began drawing blood on all DUI cases in 2001.**
- **Idaho Appellate Courts upheld blood draws.**
- **Two exceptions to warrant requirement recognized.**

State v. Wheeler



- **Wheeler refuses breath test.**
- **Blood evidence drawn in back seat of patrol car.**
- **Is this reasonable?**
- **Is it a medically acceptable?**



Nampa Police Department



- **Trained 10 Officer Phlebotomists.**
- **Since August 2009 -- have completed approximately 170 blood draws in “refusal cases.”**
- **Numbers beginning to drop -- more offenders taking breath tests.**



SEARCH INCIDENT TO ARREST



SEARCH INCIDENT TO ARREST

An officer may, as a contemporaneous incident to a lawful custodial arrest, search the arrestee's person and the area within the arrestee's immediate control, including opening any open or closed containers located therein. *Chimel v. California*, 395 U.S. 752 (1969); *State v. Sutherland*, 130 Idaho 472, 943 P.2d 62 (Ct.App.1997).

SEARCH INCIDENT TO ARREST

- The scope of a search incident to arrest is limited to the arrestee's person and the areas within the arrestee's immediate control.
- The area within the arrestee's immediate control is commonly referred to as the lunge area and is defined as the area from which an arrestee could reach to grab a weapon or destroy evidence.
State v. Heinen, 114 Idaho 656, 759 P.2d 947 (Ct.App.1988).

GANT DO IT ANYMORE?!

The recent U.S. Supreme Court decision in *Arizona v. Gant* has significantly changed the Search Incident to Arrest exception when it comes to those arrested in or near their automobile.

THE BELTON UNIVERSE

- The Former Belton Rule -- Generally: the arrest of an occupant of an automobile permitted a search of the passenger compartment of the auto incident the arrest, including the glove compartment and all open or closed containers found in the passenger compartment (including clothing in the vehicle, but not clothing being worn by someone other than the arrestee). -- New York v. Belton, 453 U.S. 454 (1981).

ARRESTEE DID NOT HAVE TO BE IN VEHICLE AT TIME OF SEARCH

The rule of Belton allowing a full search of the passenger compartment applied even where the arrestee had been removed from the vehicle, placed in handcuff, and put in a police car at the time of the passenger compartment search, as the rule was simply a “bright line” rule, and did not require an inquiry into the facts of each situation. Indeed, it would be ludicrous to think the police would search the vehicle without removing the occupants.

DEFENDANT DID NOT HAVE TO BE IN VEHICLE AT TIME OF ARREST

The Belton rule was not limited to situations where the officers' first contact with the arrestee occurred while he/she was still in the vehicle; rather, if the individual was observed to depart the vehicle, then, so long as close in time and geography to that departure, an arrest of the individual would allow the Belton search of the vehicle (the Court observing that the police may well, as a matter of safety, prefer to allow the defendant to get out of the car before approaching to make an arrest). -- *Thornton v. United States*, 124 S.Ct. 2127 (2004).

SCOPE OF BELTON SEARCH

- Belton's search incident to arrest doctrine included the rear section of a station wagon, of a van, and of a hatchback.
- The rule was essentially that police could search all areas to which an occupant would be able to gain access without leaving the vehicle.
- A search of secret or "hidden" compartments was permissible (i.e. area beneath gear shifter -- officer testified this area was well-known for concealing narcotics).

BELTON SCOPE -- LOCKED CONTAINERS

- Though not settled, it was doubtful that the search incident to arrest doctrine extended to containers which could only be opened by breaking into them. In other words, no key -- not able to search.

BELTON SEARCH -- ARREST REQUIRED

- Where the offense was the officers' discretion between arrest or ticket, a custodial arrest was required before a search incident to arrest could occur.
- If no custodial arrest was made no search incident could occur . . .
- Nor was it appropriate to manipulate the rule by arresting, search, and then the arresting officer "changing his or her mind" and ticketing.
 - Knowles v. Iowa, 525 U.S. 113 (1998).

IDAHO CASE LAW EXAMPLE:

STATE V. WATTS, (CT.APP.2005)

- Search of passenger compartment of car is allowed incident to arrest of occupant of car.
- Watts' purse, which she voluntarily left in car when exiting, was subject to search incident to arrest of another passenger in the car.
- Court compared case w/ State v. Holland (P asked for purse) and distinguished from State v. Newsome (P told to leave purse in car).

BELTON OUT THE BLUES -- NEW ORDER AFTER GANT DECISION

- Officers learned through a records check that Rodney Gant's driver's license was suspended and there was an outstanding warrant for his arrest for driving with a suspended license. Gant entered a driveway, parked his car, got out and shut the door.
- Gant was arrested, handcuffed and locked in the back of a patrol car. Officers searched incident to arrest and discovered cocaine in the pocket of a jacket on the backseat. A gun was also located in the passenger compartment of the vehicle.

MORE BACKGROUND/FACTS

- The Arizona Supreme Court found the search was unjustified under the Belton Rule because the defendant was locked in the patrol car at the time of the search, a holding that seems plainly inconsistent with Belton's "bright line" rule.
- The U.S. Supreme Court recognized here that "our opinion has been widely understood to allow a vehicle search incident to the arrest of a recent occupant even if there is no possibility the arrestee could gain access to the vehicle at the time of the search."

GANT BACKGROUND

CONTINUED . . .

Rather than flatly overruling *Belton* (which the Supreme Court actually was doing), the majority (5-4 decision) took the view that the commonly-understood reading of *Belton* was actually too expansive.

THE GANT RULE

The Search Incident to Arrest exception applies when:

1. The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or
2. Because circumstances concerning the vehicle context are unique the police may accomplish a search of the vehicle incident to a lawful arrest when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”

UNSECURED ARRESTEE

- This rationale will virtually never support a search of the vehicle.
- The Court observed in a footnote: “Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains.”

“REASONABLE TO BELIEVE”

The test should be viewed as something less than probable cause for 2 reasons:

- First, the Court found searches of the vehicle incident to arrest in this circumstance permissible because of the “circumstances unique to the vehicle context.” If probable cause were required then the Automobile Exception would apply.
- Second, the Court in *Payton v. New York*, 445 U.S. 573 (1980) did not require probable cause in the “entry into a premises to arrest” context.

DISCUSSION OF POST-GANT DECISION

- Gant does not change any other area of search of an automobile. An automobile may be searched without a warrant on:
 - Probable Cause (Automobile Exception)
 - On “container-specific” probable cause
 - After a valid inventory impoundment, and
 - On reasonable suspicion to believe there is a dangerous weapon present.

DISCUSSION OF POST-GANT DECISION

- For motor vehicle criminal offenses such as driving without privileges, invalid driver's license, inattentive driving, reckless driving, etc... it would be highly unlikely that circumstances would exist to permit a search of the vehicle.
- For other motor vehicle offenses, such as DUI, there may be valid grounds for believing that evidence relevant to the offense may exist in the vehicle (impairing substances, open containers, bar slips, etc.).

DISCUSSION OF GANT DECISION

- For arrests based on outstanding arrest warrants, it is highly unlikely that this circumstance would exist to permit a search of the vehicle, unless incriminating facts concerning the offense charged in the warrant exist at the arrest scene, or the offense is one for which evidence of the offense likely would still be found in the vehicle.
- How recent the offense was committed may be an important factor in determining the “reasonable to believe” standard in this context.

State v. Cantrell



- **Cantrell arrested for DUI by Boise PD.**
- **Officer testifies he searches the vehicle incident to arrest to look for evidence of open containers & other evidence of DUI.**

State v. Cantrell



- **Marijuana found, along with beer can.**
- **Cantrell screams, “You Gant do it!”**
- **“I told you I drank 2 hours ago & all the evidence is inside me.”**



The End

